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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,502	07/30/2003	Gary Mitchell Davenport	P138	7908

EXAMINER	
JONES, DAMERON LEVEST	

ART UNIT	PAPER NUMBER
1618	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/630,502	Applicant(s) DAVENPORT ET AL.	
	Examiner D. L. Jones	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/7/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

ACKNOWLEDGMENTS

1. The Examiner acknowledges receipt of the amendment filed 11/7/07 wherein claims 19 and 21 were amended. In addition, the Examiner acknowledges the request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/7/07 has been entered.

Note: Claims 1-27 are pending.

RESPONSE TO APPLICANT'S AMENDMENT/ARGUMENTS

2. The Applicant's arguments and/or amendment filed 11/7/07 to the rejection of claims 19-27 made by the Examiner under 35 USC 103 and/or 112 have been fully considered and deemed persuasive-in-part for the reasons set forth below.

112 Rejection

The 112, first paragraph, rejection is WITHDRAWN because Applicant has amended the claims to overcome the rejection.

103 Rejection

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejection of claims 19-27 under 35 USC 103(a) as being unpatentable over De Boer et al (JP 02227051) in view of Mattson (US Patent No. 4,034,083) is

MAINTAINED for reasons of record in the office action mailed 6/7/07 and those set forth below.

Applicant arguments may be summarized as follows. (1) Both De Boer et al and Mattson are directed to compositions for low calorie foods, reducing cholesterol, and treating and/or prevention hypercholesterolemia. Thus, neither reference is directed to compositions for mammals wherein the mammals are selected from the group consisting of cats and rabbits. (2) Neither De Boer et al or Mattson disclose the use of a composition comprising an amount of polyol fatty acid polyester effective to increase fecal hair excretion or treat a hairball.

First, De Boer et al disclose that it is known in the art that sugar fatty acid polyesters such as polyol fatty acid polyesters have the ability to capture fat soluble substances in the gastrointestinal tract and subsequently remove such substances from the human body (pages 3-4, bridging paragraph). In addition, De Boer et al disclose that the polyols may be used in various products, including products suitable as medically therapeutic foods (page 13, first and second complete paragraphs; page 13-14, bridging paragraph). De Boer et al discloses that rats (note that rats are mammals) were given a polyol fatty acid composition and data obtained and analyzed from the subjects (page 14, Example 1). Now, Mattson also discloses polyol fatty acid polyesters useful in pharmaceutical compositions. Their polyol fatty acid polyester product may be administered to animals, including humans (see entire document, especially, abstract). Thus, based on the teachings of De Boer et al and Mattson, a skilled artisan would recognize that it would be obvious to give the poly fatty acid polyester composition to an

animal (including humans) since both De Boer et and Mattson disclose that their compositions may be administered to animals. Furthermore, the skilled artisan would recognize that the term 'animal' as used in Mattson, for example, is not limited to a particular animal or group of animals. Therefore, the skilled artisan would recognize that the term 'animal' encompasses cats and rabbits.

Secondly, in response to Applicant's assertion that neither cited reference discloses the use of the compositions for fecal hair excretion or for treating a hairball, Applicant is reminded that independent claims 19 and 21 are directed to a product. Patentability of a product is based upon the components present in the product, not the use of the product. In independent claims 19 and 21, the composition comprises a polyol fatty acid polyester. Hence, in response to applicant's argument that the cited art does not disclose the use of the composition for treating hairballs or for fecal hair excretion a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim limitation. As a result, since both Applicant's and the prior art's polyol product may be administered to a mammal and the product administered to the subject in both Applicant's and the prior art's invention are the same, then both the polyol of the prior art and that of the instant invention would be capable of being used in the same manner, for treating hairballs and for increasing fecal hair excretion.


WITHDRAWN CLAIMS

3. Claims 1-18 are withdrawn from further consideration by the Examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


D. L. Jones
Primary Examiner
Art Unit 1618

January 16, 2008